रजिस्ट्री सं० डी० एल० 33004/94 REGISTERED NO. DL-33004/94

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 1
PART II—Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 17] नई दिल्ली, मंगलवार, फरवरी 1, 1994/माघ 12, 1915
No. 17] NEW DELHI, TUESDAY, FEBRUARY 1, 1994 MAGHA 12, 1915

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 1st February, 1994/Magha 12, 1915 (Saka)

The following Act of Parliament received the assent of the President on the 1st February, 1994, and is hereby published for general information:—

THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) AMENDMENT ACT, 1993

No 12 OF 1994

[*1st February, 1994.*]

An Act further to amend the Sick Industrial Companies (Special Provisions) Act, 1985

BE it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Sick Industrial Companies (Special Provisions) Amendment Act, 1993. Short title.

2. In section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the principal Act), in sub-section (*1*),— Amendment of section 3.

1 of 1986.

(i) after clause (*d*), the following clause shall be inserted, namely:—

'(*da*) "date of finalisation of the duly audited accounts" means the date on which the audited accounts of the company are adopted at the annual general meeting of the company;';

(*ii*) after clause (*g*), the following clause shall be inserted, namely:—

'(*ga*) "net worth" means the sum total of the paid-up capital and free reserves.

Explanation.—For the purposes of this clause, "free reserves" means all reserves credited out of the profits and share premium account but does not include reserves credited out of re-evaluation of assets, write back of depreciation provisions and amalgamation;';

(*iii*) for clause (*i*), the following clause shall be substituted, namely:—

'(*i*) "operating agency" means any public financial institution, State level institution, scheduled bank or any other person as may be specified by general or special order as its agency by the Board;';

(*iv*) clause (*k*) shall be omitted;

(*v*) for clause (*o*), the following clause shall be substituted, namely:—

'(*o*) "sick industrial company" means an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.

Explanation.—For the removal of doubts, it is hereby declared that an industrial company existing immediately before the commencement of the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, registered for not less than five years and having at the end of any financial year accumulated losses equal to or exceeding its entire net worth, shall be deemed to be a sick industrial company;'.

Amendment of section 8.

3. In section 8 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The Central Government may provide the Board and the Appellate Authority with such other officers and employees as may be necessary for the efficient performance of the functions of the Board and the Appellate Authority.".

Amendment of section 12.

4. In section 12 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(*3*) If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman of the Board or, as the case may be, the Appellate Authority who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case including those who first heard it.".

Amendment of section 16.

5. In section 16 of the principal Act,—

(*a*) in sub-section (3), the following *Explanation* shall be inserted at the end, namely:—

"*Explanation*.—For the purposes of this sub section, an inquiry shall be deemed to have commenced upon the receipt by the Board of any reference or information or upon its own knowledge reduced to writing by the Board.";

(*b*) in sub-section (4),—

(*i*) for the words "it shall appoint", the words "it may appoint" shall be substituted;

(*ii*) the words "or in the public interest" shall be inserted at the end;

(*c*) after sub-section (4), the following sub-section shall be inserted, namely:—

"(4A) The Board may issue such directions to a special director appointed under sub-section (4) as it may deem necessary or expedient for proper discharge of his duties.";

(*d*) in sub-section (6), after clause (c), the following clause shall be inserted, namely:—

"(*d*) not be liable to be prosecuted under any law for anything done or omitted to be done in good faith in the discharge of his duties in relation to the sick industrial company.".

Amendment of section 17.

6. In section 17 of the principal Act,—

(*a*) in sub-sections (1), (2) and (3), for the words "make its net worth positive", wherever they occur, the words "make its net worth exceed the accumulated losses" shall be substituted;

(*b*) in sub section (4), in clause (*a*), after the words "by the company concerned,", the words "or if the company fails to revive in pursuance of the said order," shall be inserted.

Amendment of section 18.

7. In section 18 of the principal Act,—

(*a*) in sub-section (1),—

(*i*) for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) the financial reconstruction of the sick industrial company;";

(*ii*) for clause (c), the following clause shall be substituted, namely:—

'(*c*) the amalgamation of—

(*i*) the sick industrial company with any other company, or

(*ii*) any other company with the sick industrial company;

(hereafter in this section, in the case of sub-clause (*i*), the other company, and in the case of sub-clause (*ii*), the sick industrial company, referred to as "transferee company");';

(*iii*) after clause (*d*), the following clause shall be inserted, namely:—

"(*da*) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;";

(*b*) in sub-section (*2*) and the other sub-sections, for the words "transferee industrial company", wherever they occur, the words "transferee company" shall be substituted;

(*c*) in sub-section (*3*),—

(*i*) for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) The scheme prepared by the operating agency shall be examined by the Board and a copy of the scheme with modification, if any, made by the Board shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Board shall publish or cause to be published the draft scheme in brief in such daily newspapers as the Board may consider necessary, for suggestions and objections, if any, within such period as the Board may specify;";

(*ii*) in clause (*b*),—

(*A*) for the words "any other industrial company", the words "any other company" shall be substituted;

(*B*) for the words "such industrial companies", the words "such companies" shall be substituted;

(*C*) in the proviso,—

(*i*) the words "of the sick industrial company" shall be omitted;

(*ii*) for the words "transferee industrial company", the words "the company other than the sick industrial company" shall be substituted;

(*d*) after sub-section (*6*), the following sub-section shall be inserted, namely:—

"(*6A*) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.";

(*e*) for sub-section (*8*), the following sub-section shall be substituted, namely:—

"(*8*) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies";

(*f*) in sub-section (*9*), after the words "the operating agency", the words "or otherwise" shall be inserted;

(*g*) after sub-section (*11*), the following sub-section shall be inserted, namely:—

"(*12*) The Board may monitor periodically the implementation of the sanctioned scheme.".

Amendment of section 19

8. In section 19 of the principal Act,—

(*a*) in sub-section (*2*), after the words "from the date of such circulation", the words "or within such further period, not exceeding sixty days, as may be allowed by the Board, and if no consent is received within such period or further period, it shall be deemed that consent has been given" shall be inserted;

(*b*) after sub-section (*3*), the following sub-sections shall be inserted, namely:—

"(*3A*) On the sanction of the scheme under sub-section (*3*), the financial institutions and the banks required to provide financial assistance shall designate by mutual agreement a financial institution and a bank from amongst themselves which shall be responsible to disburse financial assistance by way of loans or advances or guarantees or reliefs or concessions or sacrifices agreed to be provided or granted under the scheme on behalf of all financial institutions and banks concerned.

(*3B*) The financial institution and the bank designated under sub-section (*3A*) shall forthwith proceed to release the financial assistance to the sick industrial company in fulfilment of the requirement in this regard".

Insertion of new section 19A

9. After section 19 of the principal Act, the following section shall be inserted, namely.—

Arrangement for continuing operations etc., during inquiry

"19A. (*1*) At any time before completion of the inquiry under section 16, the sick industrial company or the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank or any other institution, bank or authority providing or intending to provide any financial assistance by way of loans or advances or guarantees or reliefs or concessions to the sick industrial company may make an application to the Board—

(*a*) agreeing to an arrangement for continuing the operations of the sick industrial company; or

(*b*) suggesting a scheme for the financial reconstruction of the sick industrial company.

(*2*) The Board may, within sixty days of the receipt of the application under sub-section (*1*), pass such orders thereon as it may deem fit.".

Amendment of section 20.

10. In section 20 of the principal Act, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Where the Board, after making inquiry under section 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of opinion that the sick industrial company is not likely to make its networth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court.".

Amendment of section 21.

11. In section 21 of the principal Act,—

(*a*) in the opening portion, for the words "in relation to an inquiry or scheme", the words "for the proper discharge of the functions of the Board under this Act" shall be substituted;

(*b*) in clause (*a*), for the words "an industrial company", the words "a company" shall be substituted.

Amendment of section 22.

12. In section 22 of the principal Act,—

(*a*) in sub-section (*1*), after the words "appointment of a receiver in respect thereof", the words "and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company" shall be inserted;

(*b*) in sub-section (*2*), after the words "taken over or changed", the words and figures "in pursuance of any scheme sanctioned under section 18" shall be inserted;

(*c*) in sub-section (*3*), in the opening portion, for the words "During the period", the words and figures "Where an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period" shall be substituted.

Insertion of new section 22A.

13. After section 22 of the principal Act, the following section shall be inserted, namely:—

Direction not to dispose of assets

"22A. The Board may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing, direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets—

(*a*) during the period of preparation or consideration of the scheme under section 18; and

(*b*) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (*1*) of section 20 and up to commencement of the proceedings relating to the winding up before the concerned High Court.".

Amendment of section 23.

14. In section 23 of the principal Act, in sub-section (*1*), in the opening portion, for the words "preceding five financial years", the words "preceding four financial years" shall be substituted.

Insertion of new section 23A.

15. After section 23 of the principal Act, the following section shall be inserted, namely:—

Proceedings on report, etc., of loss of fifty per cent. net worth.

"23A. (*1*) Without prejudice to the provisions of clause (*a*) of sub-section (*1*) of section 23, the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that the accumulated losses of any industrial company have resulted in erosion of fifty per cent. or more of its peak net worth during the immediately preceding four financial years, report the fact of such erosion to the Board.

(*2*) If the Board has, upon information received or upon its own knowledge, reason to believe that the accumulated losses of any industrial company have resulted in erosion of fifty per cent. or more of its peak net worth during the immediately preceding four financial years, it may call for such information from that company as it may deem fit.

(*3*) Where the Board is of the opinion that an industrial company referred to in sub-section (*1*) is not likely to make its net worth exceed its accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future, it may require by order an operating agency to inquire into and make a report with respect to such matters as may be specified in the order.

(*4*) After consideration of the report of the operating agency, the Board may publish or cause to be published a notice in such daily newspapers as the Board may consider necessary, for suggestions and objections, if any, within such period as the Board may specify, as to why the company should not be wound up.

(*5*) Where the Board, after consideration of the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of the opinion that the industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof, is not likely to become viable in future and that it is just and equitable that the company should be wound up, the Board may record and forward its opinion to the concerned High Court in relation to the company as if it were a sick industrial company and the provisions of sub-sections (*2*), (*3*) and (*4*) of section 20 shall apply accordingly.

Power of Board to call for periodic information

23B. On receipt of a report under sub-clause (*i*) of clause (*a*) of sub-section (*1*) of section 23 or under sub-section (*1*) of section 23A or upon information or its own knowledge under sub-section (*2*) of section 23A, the Board may call for any periodic information from the company as to the steps taken by the company to make its net worth exceed the accumulated losses and the company shall furnish such information.".

Amendment of section 25.

16. In section 25 of the principal Act, in sub-section (2), the words "or remand the matter to the Board for fresh consideration" shall be added at the end.

Amendment of section 28.

17. In section 28 of the principal Act, in sub-section (*2*),—

(*a*) in clause (*d*), the word "or" shall be omitted;

(*b*) in clause (*e*), the word "or" shall be inserted at the end;

(*c*) after clause (*e*), as so amended, the following clause shall be inserted, namely:—

"(*f*) the sick industrial company and, in case of amalgamation, the other company,".

Amendment of section 31.

18. In section 31 of the principal Act, the words "and no proceeding in respect of such industrial company shall lie or be proceeded with further before the Board" shall be added at the end.

Amendment of section 32.

19. In section 32 of the principal Act, sub-section (*3*) shall be omitted.

Amendment of section 33.

20. In section 33 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(*2*) No court shall take cognizance of any offence under sub-section (*1*) except on a complaint in writing of the Secretary or any such other officer of the Board or the Appellate Authority or any such officer of an operating agency as may be authorised in this behalf by the Board or the Appellate Authority.".

A. C. C. UNNI,
Additional Secretary to the Govt. of India.

CORRIGENDA

In the Multimodal Transportation of Goods Ordinance, 1993 (Ord. 6 of 1993) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 2nd January, 1993 (Issue No. 8),—

1. At page 5, in line 39, *for* "operator of", *read* "operator or of".

2. At page 9, against section 23, *insert* the marginal heading "General average.".

3. At page 10, in line 23, *for* "refererd", *read* "referred".

4. At page 11, in line 36, *for* "Amendments", *read* "Amendment".

5. At page 12, in line 10, *for* "Amendment to", *read* "Amendment of".

6. At page 13, in line 24, *for* "Amendment to", *read* "Amendment of".

CORRIGENDA

In the Acquisition of Certain Area at Ayodhya Ordinance, 1993 (Ord. 8 of 1993) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 7th January, 1993 (Issue No. 11),—

1. At page 2, in line 12, *for* "body of person", *read* "body of persons".

2. At page 4, in line 17, *for* "prefering", *read* "preferring".

CORRIGENDA

In the National Thermal Power Corporation Limited, the National Hydroelectric Power Corporation Limited and the North-Eastern Electric Power Corporation Limited (Acquisition and Transfer of Power Transmission Systems) Ordinance, 1993 (Ord. 10 of 1993) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 8th January, 1993 (Issue No. 13), at page 7,—

(i) in line 21, *for* "persons", *read* person";

(ii) in line 37, *for* "proceedings", *read* "proceeding".

CORRIGENDUM

In the Gold Bonds (Immunities and Exemptions) Ordinance, 1993 (Ord. 22 of 1993) as published in the Gazette of India Extraordinary, Part II, Section 1, dated the 31st January, 1993 (Issue No. 25), at page 2, in line 37, *for* "gound", *read* "ground".

CORRIGENDA

In the Protection of Human Rights Ordinance, 1993 (Ord. 30 of 1993) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 28th September, 1993 (Issue No. 111),—

1. At page 2, in lines 19, 23 and 24, *for* "Convenants", *read* "Covenants".

2. At page 5, in section 8, in the marginal heading, *for* "cies, etc.," *read* "and con-".

3. At page 7,—

(i) in line 3, *for* "exmination of witnesses", *read* "examination of witnesses";

(ii) in line 27, *for* "forwardad" *read* "forwarded";

(iii) in line 35, *for* invistiga-", *read* investiga-".

(iv) in line 44, *for* "discovary", *read* "discovery".

4. At page 12,—

(i) in section 26, in the marginal heading, *for* "Comis-", *read* "Commis-";

(ii) in section 27, in the marginal heading, *after* "staff of", *insert* "the".

5. At page 13,—

(i) in line 4, *for* "repori", *read* "report";

(ii) in line 26, *for* "concurrance", *read* "concurrence".

6. At page 14, in line 14, *for* "consultations", *read* "consultation".

7. At page 15, in line 27, *for* "Commission of", *read* Commission or".

8. At page 16, in line 11, *for* "Housa", *read* "House".

CORRIGENDA

In the Kalakshetra Foundation Ordinance, 1993 (Ord. 31 of 1993) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 29th September, 1993 (Issue No. 112),—

1. At page 4, in line 11, *for* "section", *read* "sections".

2. At page 6, in line 29, *for* "Government", *read* "Governing".

3. At page 8, in line 9, *for* "Government", *read* "Governing".

4. At page 10,—

(i) in line 4, *for* "shall", *read* "sell";

(ii) in line 12, *for* "directions", *read* "direction";

(iii) in section 28, in the marginal heading, *for* "funda-", *read* "founda-".

5. At page 14, at serial No. 17, in the last column, *for* "cent", *read* "cents".

6. At page 16,—

(*i*) at serial No. 25, in column (4), *for* "Thiruvanniyur", *read* "Thiruvanmiyur";

(*ii*) at serial No. 28, in column (8), *for* "Minut", *read* "Mint";

(*iii*) at serial No. 29, in the last column, *insert* "Cawnies".

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 1994.